

STEVEN BENITO RUSSO, SBN 104858  
Chief of Enforcement  
DEANNE CANAR, SBN 73933  
Senior Commission Counsel  
**FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
Sacramento, CA 95814  
Telephone: (916) 322-5660  
Facsimile: (916) 322-1932

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

FAIR POLITICAL PRACTICES COMMISSION,	)	Case No. 104CV024425
a state agency,	)	
	)	
Plaintiff,	)	COMPLAINT FOR CIVIL
	)	PENALTIES UNDER THE
v.	)	POLITICAL REFORM ACT OF 1974,
	)	AS AMENDED
COMMITTEE FOR CLEAN SAFE CREEKS,	)	
SUSAN A. PINO, AND RICK L. CALLENDER,	)	(Government Code §§ 91001(b) and
	)	91004)
	)	
Defendants.	)	UNLIMITED CIVIL ACTION

Plaintiff FAIR POLITICAL PRACTICES COMMISSION, a state agency, alleges as follows:

1. Plaintiff brings this action in the public interest to enforce the provisions of the Political Reform Act of 1974. (Government Code sections 81000 through 91014.)

**JURISDICTION AND VENUE**

2. This court has original jurisdiction over the amount in controversy in this matter. As the causes of action in this matter occurred in connection with campaign statements and reports that should have been filed with the Santa Clara County Registrar of Voters, the County of Santa Clara is the proper venue for this action, pursuant to Code of Civil Procedure section 393.

///

///

1 **PARTIES**

2 **PLAINTIFF FAIR POLITICAL PRACTICES COMMISSION**

3 3. Plaintiff Fair Political Practices Commission (the “FPPC”) is a state agency created by  
4 the Political Reform Act of 1974 (the “Act”). (Gov. Code §§ 81000 - 91014.) Plaintiff FPPC has  
5 primary responsibility for the impartial, effective administration and implementation of the Act. (Gov.  
6 Code § 83111.) Pursuant to Government Code section 91001, subdivision (b), Plaintiff FPPC is the civil  
7 prosecutor for matters involving state election campaigns. Additionally, Plaintiff FPPC may act as the  
8 civil prosecutor for matters involving a local election campaign, pursuant to Government Code section  
9 91001, subdivision (b), upon written authorization from the district attorney of the jurisdiction in which  
10 the election occurred. Plaintiff FPPC received written authorization from the District Attorney of Santa  
11 Clara County to bring and resolve this civil action against Defendants Committee for Clean Safe Creeks,  
12 Susan A. Pino, and Rick L. Callender, by letter dated April 13, 2004, and is authorized to maintain this  
13 action under Government Code sections 91001, subdivision (b), 91004, 91005, and 91005.5.

14 **DEFENDANTS COMMITTEE FOR CLEAN SAFE CREEKS, SUSAN A. PINO, AND RICK L.**  
15 **Calender**

16 4. Defendant Committee for Clean Safe Creeks (the “Committee”) was, at all times relevant  
17 to this matter, a recipient committee as defined in Government Code section 82013, subdivision (a).

18 5. Defendant Susan A. Pino (“Pino”), a retired administrative manager of the Santa Clara  
19 Valley Water District, was, at all times relevant to this matter, the treasurer of Defendant Committee.

20 6. Defendant Rick L. Callender (“Callender”), the Local Government Affairs Manager of  
21 the Santa Clara Valley Water District, was, at all times relevant to this matter, the assistant treasurer and  
22 campaign manager of Defendant Committee.

23 **CAMPAIGN REPORTING REQUIREMENTS**

24 7. An express purpose of the Act, as set forth in Government Code section 81002,  
25 subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are  
26 fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper  
27 practices may be inhibited.

28 ///



1 approximately 75% of the total contributions of Defendant Committee was not disclosed before the  
2 election.

3 13. Measure B passed, receiving 66.9% of the votes cast, with 66.6% needed.

4 **FIRST CAUSE OF ACTION**

5 (FAILURE TO FILE AN AMENDED STATEMENT OF ORGANIZATION, WITHIN TEN DAYS OF  
6 A CHANGE IN THE PRIMARY ACTIVITY OF DEFENDANT COMMITTEE)

7 14. Plaintiff re-alleges, and incorporates herein, paragraphs one through eleven, as though set  
8 forth at length.

9 15. Government Code section 82013, subdivision (a) defines a “committee” as any person or  
10 combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a  
11 calendar year. This type of committee is commonly referred to as a “recipient” committee.

12 16. Under Government Code section 82047.5, subdivision (b), a recipient committee that is  
13 formed or exists primarily to support or oppose a single measure is a “primarily formed committee.”  
14 The term “measure” is defined in Government Code section 82043 to mean any constitutional  
15 amendment or other proposition which is submitted to a popular vote at an election by action of a  
16 legislative body.

17 17. Government Code section 84101, subdivision (a) requires a recipient committee to file a  
18 statement of organization within ten days of qualifying as a committee. When a recipient committee is  
19 also formed primarily to support or oppose a single measure, the ten-day filing period begins to run  
20 when the constitutional amendment or other proposition is placed on the ballot by a legislative body.

21 18. Whenever there is a change in any of the information in a statement of organization,  
22 Government Code section 84103, subdivision (a) requires a recipient committee to file a statement  
23 within ten days, to reflect the change.

24 19. Under Government Code sections 84101 and 84103, and Government Code section  
25 84215, subdivision (d), the original statement of organization and any amendments to the statement of  
26 organization must be filed with the Secretary of State and a copy must be filed with the local filing  
27 officer with whom the committee is required to file the originals of its campaign reports pursuant to  
28 Government Code section 84215.

1           20.     Government Code section 84215, subdivision (d) provides that when a recipient  
2 committee is also a committee formed or existing primarily to support or oppose local measures to be  
3 voted upon in any number of jurisdictions within one county, the local filing officer is the clerk of the  
4 county.

5           21.     Under Government Code section 84102, subdivision (d), a recipient committee is  
6 required to provide, in a statement of organization, the title and ballot number, if any, of any measure,  
7 which the committee supports or opposes as its primary activity.

8           22.     Defendant Committee qualified as a recipient committee, on or about April 28, 2000, by  
9 receiving a contribution in the amount of \$1,000 from Kay Whitlock, who was, at all times relevant to  
10 this matter, the Assistant General Manager for External Affairs of the Santa Clara Valley Water District.

11           23.     Defendants Pino and Callender established Defendant Committee, on July 10, 2000, by  
12 filing a statement of organization with the Santa Clara County Registrar of Voters. This initial statement  
13 of organization stated that Defendant Committee was a recipient committee, but did not specify the type  
14 of recipient committee Defendant Committee was, or contain a description of its primary political  
15 activity.

16           24.     Defendants Pino and Callender filed an amendment to the initial statement of  
17 organization with the Secretary of State and Santa Clara County Registrar of Voters, also on July 10,  
18 2000, declaring that Defendant Committee was a general purpose recipient committee whose purpose  
19 was to support ballot initiatives relative to flood protection and environmental enhancement.

20           25.     On July 25, 2000, the Santa Clara Valley Water District voted to place the “Clean, Safe  
21 Creeks and Natural Flood Protection Plan,” on the November 7, 2000 ballot. On August 11, 2000, the  
22 ballot measure was designated as Measure B by the Santa Clara County Clerk.

23           26.     The primary activity of Defendant Committee, from the date the Clean, Safe Creeks and  
24 Natural Flood Protection Plan became a ballot measure, on July 25, 2000, through the post-election  
25 period ending on December 31, 2000, was to support the passage of Measure B in the November 7, 2000  
26 election.

27           27.     Within ten days of July 25, 2000, Defendants Committee, Pino, and Callender were  
28 required, under Government Code section 84103, subdivision (a), to file an amended statement of

1 organization, to disclose that Defendant Committee was a “primarily formed committee,” whose  
2 primary activity was to support the passage of a measure known as the Clean, Safe Creeks and Natural  
3 Flood Protection Plan, on the ballot in Santa Clara County, in the November 7, 2000 election.

4 28. Defendants Committee, Pino, and Callender failed to file the required amended statement  
5 of organization with the Secretary of State and Santa Clara County Registrar of Voters within ten days  
6 of July 25, 2000, to disclose a change in the primary activity of the committee.

7 29. By intentionally or negligently failing to file an amended statement of organization  
8 within ten days of a change in the primary activity of Defendant Committee, Defendants Committee,  
9 Pino, and Callender violated Government Code section 84103, subdivision (a).

## 10 **SECOND CAUSE OF ACTION**

### 11 (FAILURE TO TIMELY FILE A PRE-ELECTION CAMPAIGN STATEMENT)

12 30. Plaintiff re-alleges, and incorporates herein, paragraphs one through eleven, fifteen,  
13 sixteen, twenty-two, twenty-five, and twenty-six, as though set forth at length.

14 31. Government Code section 84200.5 requires a committee primarily formed to support a  
15 ballot measure to file two pre-election campaign statements, disclosing contributions received and  
16 expenditures made before any election in which the committee is engaged in campaign activity.

17 32. Under Government Code section 84200.7, subdivision (b), the first pre-election campaign  
18 statement prior to a November election held in an even-numbered year must cover activity through  
19 September 30, and be filed by October 5. Under the same section and subdivision, the second pre-  
20 election campaign statement prior to a November election held in an even-numbered year must cover  
21 activity through the 17 days prior to the election, and must be filed by 12 days prior to the election.

22 33. As a committee primarily formed to support the passage of a local ballot measure,  
23 Defendant Committee, and its treasurers, Defendants Pino and Callender, were required, under  
24 Government Code section 84200.5, subdivision (b), to file a second pre-election campaign statement by  
25 October 26, 2000, disclosing the contribution and expenditure activity of Defendant Committee during  
26 the second pre-election reporting period of October 1, 2000 through October 21, 2000.

27 ///

28 ///

34. Defendants Committee, Pino, and Callender failed to file with the Santa Clara County Registrar of Voters the required pre-election campaign statement, for the reporting period October 1, 2000 through October 21, 2000, by the October 26, 2000 due date.

35. Defendants Committee, Pino, and Callender did not file the pre-election campaign statement that was due by October 26, 2000 until December 26, 2000, after the November 7, 2000 election in which Measure B appeared on the ballot.

36. The pre-election campaign statement filed on December 26, 2000 revealed that during this second pre-election reporting period, Defendants received approximately twenty-nine (29) contributions totaling \$170,995, two-thirds of the total contributions of Defendant Committee, and made total expenditures of approximately \$65,668.

37. The pre-election campaign statement filed on December 26, 2000 revealed that during this second pre-election reporting period, Defendants received six contributions of \$10,000 or more from the following persons: Coyote Valley Research, LLC, \$50,000; Applied Materials, Inc., \$25,000; Cisco Systems, Inc., \$25,000; Cargill, Inc., \$15,000; CDM, \$15,000; and URS Greiner Woodward Clyde, \$10,000.

38. By intentionally or negligently failing to file a second pre-election campaign statement by October 26, 2000, disclosing \$170,995 in contributions and \$65,668 in expenditures, Defendants Committee, Pino, and Callender violated Government Code section 84200.5, subdivision (b).

### THIRD CAUSE OF ACTION

(FAILURE TO REPORT LATE CONTRIBUTIONS)

39. Plaintiff re-alleges, and incorporates herein, paragraphs one through eleven, fifteen, sixteen, twenty-two, twenty-five, and twenty-six, as though set forth at length.

40. Under Government Code section 84203, subdivision (a), when a recipient committee receives a late contribution, the committee must disclose the contribution in a late contribution report that must be filed within 24 hours of receiving the late contribution.

41. Government Code section 84203, subdivision (a) and Government Code section 84215, subdivision (d) require recipient committees that are formed or existing primarily to support or oppose

11

1 local measures to be voted upon in any number of jurisdictions within one county to file late  
2 contribution reports with the clerk of the county.

3 42. Government Code section 82036 defines a “late contribution” as a contribution  
4 aggregating \$1,000 or more that is received before an election, but after the closing date of the last pre-  
5 election campaign statement that is required to be filed.

6 43. Under Government Code sections 82036 and 84200.7, the late contribution period prior  
7 to an election is the last 16 days before the election.

8 Failure to Report a \$10,000 Late Contribution Received on October 27, 2000

9 44. On October 27, 2000, Defendants Committee, Pino, and Callender received a late  
10 contribution in the amount of approximately \$10,000 from New Cities Development, a real estate  
11 development company.

12 45. After receiving the \$10,000 late contribution from New Cities Development, Defendants  
13 Committee, Pino, and Callender had a duty to file a late contribution report with the Santa Clara County  
14 Registrar of Voters no later than October 28, 2000, disclosing the late contribution. Defendants did not  
15 file a late contribution report disclosing the late contribution by the October 28, 2000 due date.

16 46. By intentionally or negligently failing to disclose a \$10,000 late contribution from New  
17 Cities Development in a properly filed late contribution report by October 28, 2000, Defendants  
18 Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

19 Failure to Report a \$1,000 Late Contribution Received on October 28, 2000

20 47. On October 28, 2000, Defendants Committee, Pino, and Callender received a late  
21 contribution in the amount of approximately \$1,000 from LFR, Inc., an environmental consulting and  
22 engineering firm.

23 48. After receiving the \$1,000 late contribution from LFR, Inc., Defendants Committee,  
24 Pino, and Callender had a duty to file a late contribution report with the Santa Clara County Registrar of  
25 Voters no later than October 29, 2000, disclosing the late contribution. Defendants did not file a late  
26 contribution report disclosing the late contribution by the October 29, 2000 due date.

27 ///

28 ///



49. By intentionally or negligently failing to disclose a \$1,000 late contribution from LFR, Inc. in a properly filed late contribution report by October 29, 2000, Defendants Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

Failure to Report a \$1,500 Late Contribution Received on November 6, 2000

50. On November 6, 2000, Defendants Committee, Pino, and Callender received a late contribution in the amount of approximately \$1,500 from Malcolm Pirnie, Inc., an environmental consulting firm.

51. After receiving the \$1,500 late contribution from Malcolm Pirnie, Inc., Defendants Committee, Pino, and Callender had a duty to file a late contribution report with the Santa Clara County Registrar of Voters no later than November 7, 2000, disclosing the late contribution. Defendants did not file a late contribution report disclosing the late contribution by the November 7, 2000 due date.

52. By intentionally or negligently failing to disclose a \$1,500 late contribution from Malcolm Pirnie, Inc. in a properly filed late contribution report by November 7, 2000, Defendants Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

Failure to Report a \$2,500 Late Contribution Received on November 6, 2000

53. On November 6, 2000, Defendants Committee, Pino, and Callender received a late contribution in the amount of approximately \$2,500 from Calpine & Bechtel Joint Development, power and energy companies.

54. After receiving the \$2,500 late contribution from Calpine & Bechtel Joint Development, Defendants Committee, Pino, and Callender had a duty to file a late contribution report with the Santa Clara County Registrar of Voters no later than November 7, 2000, disclosing the late contribution. Defendants did not file a late contribution report disclosing the late contribution by the November 7, 2000 due date.

55. By intentionally or negligently failing to disclose a \$2,500 late contribution from Calpine & Bechtel Joint Development in a properly filed late contribution report by November 7, 2000, Defendants Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

///

///

1                    Failure to Report a \$5,000 Late Contribution Received on November 6, 2000

2            56.     On November 6, 2000, Defendants Committee, Pino, and Callender received a late  
3 contribution in the amount of approximately \$5,000 from Shapell Industries of Northern California, a  
4 real estate development company.

5            57.     After receiving the \$5,000 late contribution from Shapell Industries of Northern  
6 California, Defendants Committee, Pino, and Callender had a duty to file a late contribution report with  
7 the Santa Clara County Registrar of Voters no later than November 7, 2000, disclosing the late  
8 contribution. Defendants did not file a late contribution report disclosing the late contribution by the  
9 November 7, 2000 due date.

10           58.     By intentionally or negligently failing to disclose a \$5,000 late contribution from Shapell  
11 Industries of Northern California in a properly filed late contribution report by November 7, 2000,  
12 Defendants Committee, Pino, and Callender violated Government Code section 84203, subdivision (a).

13                    **FOURTH CAUSE OF ACTION**

14           (FAILURE TO REPORT SUBVENDOR INFORMATION ON A PRE-ELECTION STATEMENT)

15           59.     Plaintiff re-alleges, and incorporates herein, paragraphs one through eleven, fifteen,  
16 sixteen, twenty-two, twenty-five, and twenty-six, as though set forth at length.

17           60.     Government Code section 84211, subdivision (j), as it existed in October 2000, required  
18 the disclosure of specific information for all expenditures of \$100 or more made during the period  
19 covered by a campaign statement, including the name and street address of the person to whom the  
20 expenditure had been made, the amount of the expenditure, and a brief description of the consideration  
21 that was received for the expenditure.

22           61.     Government Code section 84303, as it existed in October 2000, provided that no  
23 expenditure shall be made, other than for overhead and normal operating expenses, by an agent or  
24 independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the  
25 benefit of, any committee, unless it is reported by the committee as if the expenditure was made directly  
26 by the committee. Persons to whom expenditures are made through an agent or independent contractor  
27 on behalf of a committee are commonly referred to as “subvendors.”

28     ///

1           62.     As a recipient committee, Defendant Committee, and its treasurers, Defendants Pino and  
2 Callender, had a duty to report on the campaign statements of Defendant Committee, specified  
3 information regarding payments of \$100 or more that were made on behalf of Defendant Committee to  
4 subvendors for campaign mailings and other campaign services.

5           63.     On or about October 11, 2000, Defendants Committee, Pino, and Callender made a  
6 \$56,193 payment to their political consultant, Terris, Jaye & Barnes, which, in turn, used the payment to  
7 make approximately \$49,795 in expenditures to various subvendors for the design and printing of  
8 300,000 brochures and the mailing of 50,000 of those brochures on Defendant Committee's behalf. This  
9 payment to Terris, Jaye & Barnes represented approximately 20% of the total expenditures of Defendant  
10 Committee.

11           64.     Defendants Committee, Pino, and Callender were required to report the name and street  
12 address of each sub-vendor, the amount of the expenditures made to each subvendor, and a brief  
13 description of the consideration that was received for each of the expenditures, on the second pre-  
14 election campaign statement of Defendant Committee, covering the reporting period October 1, 2000  
15 through October 21, 2000. The second pre-election campaign statement filed with the Santa Clara  
16 County Registrar of Voters on December 26, 2000, for the reporting period October 1, 2000 through  
17 October 21, 2000, did not report any itemized information regarding subvendor payments.

18           65.     By intentionally or negligently failing to report \$49,795 in expenditures made to  
19 subvendors in the second pre-election campaign statement, filed on December 26, 2000, for the  
20 reporting period October 1, 2000 through October 21, 2000, Defendants Committee, Pino, and Callender  
21 violated Government Code sections 84211, subdivision (j)(6), and 84303.

22  
23           WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

24           1.     With respect to the first cause of action, for statutory penalties against Defendants  
25 Committee for Clean Safe Creeks, Susan A. Pino, and Rick L. Callender, jointly and severally, payable  
26 to the "General Fund of the State of California," according to proof, in an amount up to two thousand  
27 dollars (\$2,000) for the violation alleged, as permitted by Government Code sections 91005.5 and  
28 91006.

1           2.       With respect to the second, third, and fourth causes of action, for statutory penalties  
2 against Defendants Committee for Clean Safe Creeks, Susan A. Pino, and Rick L. Callender, jointly and  
3 severally, payable to the “General Fund of the State of California,” according to proof, in an amount up  
4 to the amount not properly reported, as permitted by Government Code sections 91004 and 91006.

5           3.       For such other and further relief as the Court may deem proper.  
6

7 Dated: August 3, 2004

FAIR POLITICAL PRACTICES COMMISSION

8  
9 By: \_\_\_\_\_  
10 Deanne Canar  
11 Attorney for Plaintiff  
12 Fair Political Practices Commission  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28